

The Honorable Ronald B. Leighton



07-CV-05091-ORD

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CLERK U.S. DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT TACOMA BY DEPUTY	

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

ALYCIA CARMICHAEL-MILAN,)	NO. C07-5091RBL
)	
Plaintiff,)	JOINT MOTION AND
)	STIPULATED ORDER
v.)	VACATING TRIAL AND
)	PRETRIAL DATES PENDING
GWEN K. SAILER, <i>et al.</i>)	RULING ON DEFENDANTS'
)	QUALIFIED IMMUNITY
Defendants.)	MOTION
)	NOTE DATE: 11/6/07

The parties jointly move the Court to vacate the trial date and all pretrial dates pending a ruling on Defendants' motion for summary judgment. The basis for this motion is that no discovery has occurred in this case since July 11, 2007, due to the pendency of Defendants' motion for summary judgment based upon, among other grounds, qualified immunity. Because qualified immunity is not only a defense to liability but an entitlement to immunity from the demands of litigation, the United States Supreme Court has made clear that discovery should not proceed until issues of qualified immunity are resolved. *E.g., Siegert v. Gilley*, 500 U.S. 225 (1991); *Anderson v. Creighton*, 483 U.S. 635, 646 n.6 (1987); *Harlow v. Fitzgerald*, 457 U.S.

JOINT MOTION TO VACATE TRIAL AND
PRETRIAL DATES (No. C07-5091RBL) - 1

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1 800, 817-18 (1982). The Court has scheduled oral argument on Defendants' motion
2 for December 21. The discovery cut-off is presently December 31, with trial set for
3 April 28, 2008.

4 This case was filed on February 26. Defendant Pearson filed a motion for
5 summary judgment based in part on qualified immunity on March 22, before the date
6 authorized under Fed. R. Civ. P. 26(d) for the initiation of discovery. The parties held
7 their Rule 26(f) conference on May 8. The Court granted defendant Pearson's motion
8 for qualified immunity on June 6 and also issued an order setting the pretrial and trial
9 dates. On July 11 the remaining defendants filed a motion for summary judgment
10 based in part upon qualified immunity. Plaintiff has served written discovery, but
11 Defendants have claimed immunity from any duty to respond while their motion for
12 summary judgment based on qualified immunity remains pending with the Court.
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15 The parties therefore jointly request the Court vacate all pretrial and trial dates
16 pending resolution of Defendants' qualified immunity motion. If the Court grants
17 Defendants' motion, there would obviously be no need to schedule new pretrial and
18 trial dates. If the Court denies Defendants' motion, Defendants have a right to file an
19 interlocutory appeal with the Ninth Circuit, thus staying discovery and any trial
20 proceedings. If summary judgment is denied and Defendants do not file an
21 interlocutory appeal, the parties will submit a new Joint Status Report regarding trial
22 and pretrial dates.
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26 JOINT MOTION TO VACATE TRIAL AND
27 PRETRIAL DATES (No. C07-5091RBL) - 2

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1 RESPECTFULLY SUBMITTED THIS 5th of November, 2007.

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4 

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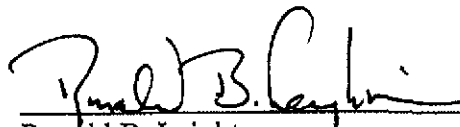
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16 Mark Anderson, WSBA # 26352

17 Assistant Attorney General

18 Attorneys for Defendants

19 It is so ordered this 9th day of November 2007.

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21 

22 Ronald B. Leighton

23 United States District Judge
24

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26 JOINT MOTION TO VACATE TRIAL AND
27 PRETRIAL DATES (No. C07-5091RBL) - 3

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